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PHILLIPS & COHEN ASSOCIATES, LTD.

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

11 RAMONA PATRICIA CARDON,
12 Plaintiff,

13 vs.

14 PHILLIPS & COHEN ASSOCIATES, LTD., A
15 New Jersey Corporation,

16 Defendant.

Case Number C08-00926-JW
ANSWER TO COMPLAINT

17 COMES NOW defendant, PHILLIPS & COHEN ASSOCIATES, LTD., and answers the
18 Complaint filed by plaintiff, RAMONA PATRICIA CARDON as follows:

20 **I. INTRODUCTION**

21 1. PHILLIPS & COHEN ASSOCIATES, LTD. denies the allegations that defendant
22 violated the referenced statutes but admits the remaining allegations of paragraph 1.

23 2. PHILLIPS & COHEN ASSOCIATES, LTD. admits that the complaint accurately
24 recites the quoted portion of the referenced statute in paragraph 2.

25 **II. JURISDICTION**

26 3. PHILLIPS & COHEN ASSOCIATES, LTD. admits the Court has jurisdiction but
27 denies the balance of the allegations in paragraph 3.

28 4. PHILLIPS & COHEN ASSOCIATES, LTD. admits the Court has jurisdiction but

denies the balance of the allegations in paragraph 4.

III. VENUE

5. PHILLIPS & COHEN ASSOCIATES, LTD. admits that venue is proper but denies the balance of the allegations in paragraph 5.

IV. INTRADISTRICT ASSIGNMENT

6. PHILLIPS & COHEN ASSOCIATES, LTD. admits that the requested assignment is proper but denies the balance of the allegations in paragraph 6.

V. PARTIES

7. PHILLIPS & COHEN ASSOCIATES, LTD. denies the allegations in paragraph 7 for lack of sufficient information to justify a belief therein.

8. PHILLIPS & COHEN ASSOCIATES, LTD. admits that it is a New Jersey Corporation located at the referenced address and that it regularly attempts to collect debts alleged to be due another using mail and telephone but denies the remaining allegations in 8 for lack of sufficient information to justify a belief therein.

VI. FACTUAL ALLEGATIONS

9. PHILLIPS & COHEN ASSOCIATES, LTD. admits that plaintiff incurred the referenced financial obligation but denies the remaining allegations of paragraph 9 due to lack of sufficient information to justify a belief therein.

10. PHILLIPS & COHEN ASSOCIATES, LTD. admits the allegations of paragraph 10.

11. PHILLIPS & COHEN ASSOCIATES, LTD. admits that a collection letter was sent to plaintiff but denies the remaining allegations in paragraph 11 for lack of sufficient information to justify a belief therein.

12. PHILLIPS & COHEN ASSOCIATES, LTD. admits that a collection letter was sent to plaintiff but denies the remaining allegations in paragraph 12 for lack of sufficient information to justify a belief therein.

13. PHILLIPS & COHEN ASSOCIATES, LTD. admits the allegations of paragraph 13.

14. PHILLIPS & COHEN ASSOCIATES, LTD. denies the allegations in paragraph 14 for lack of sufficient information to justify a belief therein.

15. PHILLIPS & COHEN ASSOCIATES, LTD. denies the allegations in paragraph 15 for lack of sufficient information to justify a belief therein.

16. PHILLIPS & COHEN ASSOCIATES, LTD. denies the allegations in paragraph 16 for lack of sufficient information to justify a belief therein.

17. PHILLIPS & COHEN ASSOCIATES, LTD. denies the allegations in paragraph 17 for lack of sufficient information to justify a belief therein.

18. PHILLIPS & COHEN ASSOCIATES, LTD. denies the allegations in paragraph 18

19. PHILLIPS & COHEN ASSOCIATES, LTD. denies the allegations in paragraph 19.

20. PHILLIPS & COHEN ASSOCIATES, LTD. denies the allegations in paragraph 20.

21. PHILLIPS & COHEN ASSOCIATES, LTD. denies the allegations in paragraph 21.

VII. CLAIMS

FAIR DEBT COLLECTION PRACTICES ACT

22. PHILLIPS & COHEN ASSOCIATES, LTD. denies the allegations in paragraph 22
for lack of sufficient information to justify a belief therein.

23. PHILLIPS & COHEN ASSOCIATES, LTD. incorporates herein as if fully set forth its responses to paragraphs 1 through 21 above.

24. PHILLIPS & COHEN ASSOCIATES, LTD. denies the allegations in paragraph 24
for lack of sufficient information to justify a belief therein.

25. PHILLIPS & COHEN ASSOCIATES, LTD. denies the allegations in paragraph 25
for lack of sufficient information to justify a belief therein.

26. PHILLIPS & COHEN ASSOCIATES, LTD. denies the allegations in paragraph 26 for lack of sufficient information to justify a belief therein.

27. PHILLIPS & COHEN ASSOCIATES, LTD. denies the allegations in paragraph 27
(a) through (f).

28. PHILLIPS & COHEN ASSOCIATES, LTD. denies the allegations in paragraph 28.

29. PHILLIPS & COHEN ASSOCIATES, LTD. denies the allegations in paragraph 29.

ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT

30. PHILLIPS & COHEN ASSOCIATES, LTD. denies the allegations in paragraph 30

1 for lack of sufficient information to justify a belief therein.

2 31. PHILLIPS & COHEN ASSOCIATES, LTD. incorporates herein as if fully set forth
3 its responses to paragraphs 1 through 29 above.

4 32. PHILLIPS & COHEN ASSOCIATES, LTD. denies the allegations in paragraph 32
5 for lack of sufficient information to justify a belief therein.

6 33. PHILLIPS & COHEN ASSOCIATES, LTD. denies the allegations in paragraph 33
7 for lack of sufficient information to justify a belief therein.

8 34. PHILLIPS & COHEN ASSOCIATES, LTD. denies the allegations in paragraph 34
9 for lack of sufficient information to justify a belief therein.

10 35. PHILLIPS & COHEN ASSOCIATES, LTD. denies the allegations in paragraph 35
11 (a) through (f).

12 36. PHILLIPS & COHEN ASSOCIATES, LTD. denies the allegations in paragraph 36.

13 37. PHILLIPS & COHEN ASSOCIATES, LTD. denies the allegations in paragraph 37.

14 38. PHILLIPS & COHEN ASSOCIATES, LTD. denies the allegations in paragraph 38.

15 39. PHILLIPS & COHEN ASSOCIATES, LTD. denies the allegations in paragraph 39.

16 40. PHILLIPS & COHEN ASSOCIATES, LTD. denies the allegations in paragraph 40
17 for lack of sufficient information to justify a belief therein.

18 **PRAAYER**

19 41. In response to the REQUEST FOR RELIEF, PHILLIPS & COHEN ASSOCIATES,
20 LTD. denies that plaintiff is entitled to the relief sought.

21 **AFFIRMATIVE DEFENSES**

22 In further response to plaintiff's complaint, PHILLIPS & COHEN ASSOCIATES, LTD.
23 asserts the following affirmative defenses:

24 **FIRST AFFIRMATIVE DEFENSE**

25 Plaintiff's complaint should be dismissed because the asserted causes of action fail to state
26 claims upon which relief can be granted.

27 **SECOND AFFIRMATIVE DEFENSE**

28 At all times relating to this lawsuit, PHILLIPS & COHEN ASSOCIATES, LTD. and its

1 employees acted in good faith. If there was any wrongful act by PHILLIPS & COHEN
2 ASSOCIATES, LTD. or its employees, which is denied by defendant, such act was not intentional
3 and was the result of a bona fide error.

4 THIRD AFFIRMATIVE DEFENSE

5 PHILLIPS & COHEN ASSOCIATES, LTD. has not violated any law and is entitled to
6 attorney's fees under the FDCPA.

7 FOURTH AFFIRMATIVE DEFENSE

8 Assuming that plaintiff has suffered any damages, plaintiff has failed to mitigate her damages
9 or take other reasonable steps to avoid or reduce her damages.

10 FIFTH AFFIRMATIVE DEFENSE

11 Plaintiff's claims are barred wholly or partially by the applicable statutes of limitation.

12 SIXTH AFFIRMATIVE DEFENSE

13 PHILLIPS & COHEN ASSOCIATES, LTD. affirmatively avers that plaintiff cannot satisfy
14 the necessary burden of proof to recover punitive or liquidated damages under any federal or state
15 law.

16 SEVENTH AFFIRMATIVE DEFENSE

17 PHILLIPS & COHEN ASSOCIATES, LTD. affirmatively avers that any violation by
18 defendant, which defendant denies, was not intentional and resulted notwithstanding the maintenance
19 of procedures reasonably adopted to avoid any such violation.

20 WHEREFORE, considering the premises, PHILLIPS & COHEN ASSOCIATES, LTD.
21 respectfully requests that the Court enter judgment in its favor and award PHILLIPS & COHEN
22 ASSOCIATES, LTD. the costs and attorney's fees it has incurred in defending this lawsuit.

23 Dated: March 3, 2008

24 ERICKSEN, ARBUTHNOT, KILDUFF, DAY & LINDSTROM, INC.

25 _____
26 s/Steve W. Dollar _____
27 STEVE W. DOLLAR
Attorneys for Defendant